



CF0000063183

(2)

Bilaspur chh?

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P.)

Criminal Appeal No. 4 /2000

APPELLANT
In Jail

Bhimlal, S/o Bannulal Sen,
Aged about 36 years,
R/o Gram- Thelhi, P.S. Palari,
Distt.- Raipur (M.P.) CHH

Versus

RESPONDENT

The State of M.P. CHH.
Through P.S. Palari, Distt.-
Raipur (M.P.) CHH

S.T.No. 115/2000

Under Section 147, 148, & 307, 302, 502, R/W Section
149 of I.P.C.

Court of - Hon'ble Smt. Anuradha Khare, Ist A.S.J.
Baloda Bazar, Raipur (M.P.)

CRIMINAL APPEAL UNDER SECTION 374 (2) OF Cr.P.C.

मामला क्रमांक सन् 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Division Bench: - Hon'ble Mr. L.C. Bhadoo, Ag.C.J. and Hon'ble Mr. Sunil Kumar Sinha, J. 5-2-2007 Mr. Rajesh Jain, Advocate, appears on behalf of Mrs. Kiran Jain, counsel for the appellant. Mr. Sudhir Bajpai, Deputy Govt. Advocate for the State/respondent. Mr. Rajesh Jain submits that this matter is allotted to Mrs. Kiran Jain, Advocate, as she is in family way therefore, it is not possible for her to come to the Court for at least three months. He further submits that he has prepared the case and he is ready to argue the case, as such, Mr. Rajesh Jain is permitted to argue the case on behalf of Mrs. Kiran Jain. Oral judgment dictated on <i>Dais</i>. Per L.C. Bhadoo, Ag.C.J.: - This appeal is directed against the judgment of conviction and order of sentence dated 28-7-2000 passed by the 1st Additional Sessions Judge, Baloda Bazaar, in Sessions Trial No.115/2000, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302 & 324 of the I.P.C., sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for one ^{6 months} ~~year~~ and to undergo R.I. for one month, respectively. It was directed that both the sentences shall run	

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...A...4/... सन् 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	concurrently. Accused Kumari Bai was convicted under Section 323 of the I.P.C. and she was directed to undergo R.I. for seven days. However, two accused persons namely, Bhojram and Tijia Bai, brother and mother of the accused/appellant, respectively, were acquitted. The case of the prosecution, in brief, is that in the morning of 28-12-1999 some dispute took place between accused Bhimlal and his younger brother Dhaneshwar Prasad (since deceased) on the ground that Dhaneshwar Prasad demanded his share of paddy which was refused by the accused/appellant. In the evening, when the accused/appellant along with his wife and children was standing in the street, the accused attacked the deceased with an axe on his head, when wife of Dhaneshwar Prasad namely, Ram Kumari intervened, Kumari Bai wife of the accused, Tijia Bai mother of the accused, Bhojram brother of the accused and Trilochan son of the accused attacked the deceased, his wife Ram Kumari and daughter Kavita sustained injuries. Dhaneshwar Prasad succumbed to the injuries sustained by him. The matter was reported by Ram Kumari under Dehati Nalishi Ex.P-1. Merg intimation given to Police Station: Baloda Bazaar was registered at No.0/99 under Ex.P-24 on 28-12-1999. Thereafter, Police Station: Palari registered merg at serial No.50/99 under Ex.P-27 and based on that, F.I.R.s Exs.P-23 and P-26 were registered. The Investigating Officer left for the scene of occurrence and prepared the site plan	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A.4/..... सन् 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Ex.P-4. Site plan Ex.P-14 was prepared by the Halka Patwari. The Investigating Officer after giving notice Ex.P-10 to the Panchas, prepared the inquest Ex.P-11 on the body of Dhaneshwar Prasad. He seized plain soil and blood stained soil as also the broken pieces of door and the pickaxe under Exs.P-5 and P-9. The body of Dhaneshwar Prasad was sent for post-mortem examination to the Government Hospital, Baloda Bazaar, where Dr. Ram Sevak Joshi (PW-5) conducted post-mortem and prepared the post-mortem report Ex.P-7. The injured persons were also examined by Dr. Pramod Kumar Tiwari (PW-10) and he prepared the injury reports Ex.P-12 & P-13. The recovered articles were sent for chemical examination to the Forensic Science Laboratory, Raipur under Ex.P-22 from where the report Ex.P-21 was received. After completion of investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Baloda Bazaar, who in turn committed the case to the Sessions Judge, Raipur, from where learned Additional Sessions Judge, Baloda Bazaar received the case on transfer for trial. The prosecution in order to establish charge against the accused persons examined 15 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक A. 4/..... सन् 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	evidence. Accused/appellant Bhimlal stated that at the time of incident he was not at his residence, as he had gone to the field. He has taken the defence that the deceased and his wife used to quarrel. After hearing counsel for the respective parties, learned Additional Sessions Judge convicted and sentenced the accused/appellant and his wife namely, Kumari Bai as aforementioned. However, she acquitted accused Bhojram and Tijia Bai. We have heard Mr. Rajesh Jain, learned counsel for the appellant and Mr. Sudhir Bajpai, learned Deputy Govt. Advocate on behalf of the State/respondent. Mr. Jain has not disputed the homicidal death of Dhaneshwar Prasad. Moreover, as per the ocular evidence of Smt. Ram Kumari Shrivastava (PW-1) & Kum. Kavita Shrivastava (PW-2) as also the medical evidence of Dr. Ram Sevak Joshi (PW-5) who conducted post-mortem on the body of Dhaneshwar Prasad and who has stated in his evidence that the death of Dhaneshwar Prasad was homicidal in nature, it is established that the death of Dhaneshwar Prasad was homicidal. As far as involvement of the accused/appellant in the crime in question is concerned, Mr. Jain argued that other co-accused persons also participated in the crime, Trilochan attacked with pickaxe, others with Lathis and most of the injuries which were found on the body of deceased Dhaneshwar were caused by the blunt and hard object.	

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मामला क्रमांक 4/..... सन् 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Therefore, there is every possibility that those injuries were inflicted by the accused persons, as such, the accused/appellant has been convicted wrongly. On the other hand, Mr. Sudhir Bajpai supported the judgment of the trial Court. Having heard learned counsel for the parties, in order to appreciate the arguments advanced by Mr. Jain, we have perused the evidence of eyewitness Smt. Ram Kumari Shrivastava (PW-1), wife of the deceased and Kum. Kavita Shrivastava (PW-2), daughter of the deceased, as also the evidence of Dr. Ram Sevak Joshi (PW-5). Smt. Ram Kumari Shrivastava (PW-1) has stated in her evidence that on the fateful day when her husband was taking buffalo inside the house, and they were standing there, accused/appellant Bhimlal, his wife and children objected her husband as to why he is taking the buffalo inside, on which her husband said that he is not going to quarrel with his sister-in-law and started coming inside the house. Bhimlal went to his house, brought the axe and attacked her husband with ~~that~~ axe as a result of which her husband sustained injury on shoulder, when she tried to intervene, wife and children of the accused started attacking her with club as a result of which she fell down and sustained injuries on face, arm and backside. In the mean time, accused Bhimlal was continuously assaulting her husband with the axe. In order to save her life, she	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...G...A...4... सन् 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	ran into the house and closed the door from inside on which the accused persons came and entered the house after breaking open the doors. Accused Bhimlal also attacked Kavita with the axe as a result of which she sustained injuries. Thereafter, she (PW-1) reported the matter. Kum. Kavita (PW-2), daughter of the deceased, has also corroborated the above evidence who has stated in her evidence that on the fateful day at about 5 p.m. accused Bhimlal came with axe and attacked her father, when her mother tried to intervene, beating was given to her also. In cross-examination of these two witnesses, defence has not been able to bring any circumstance that the injuries sustained by Dhaneshwar Prasad, particularly the injuries sustained by Dhaneshwar on head, hand and chest were inflicted by the co-accused persons. Therefore, the argument advanced by Mr. Jain that there is every possibility that the injury on chest or hand or head might have been inflicted by the co-accused persons is not based on any legal evidence available on record. Moreover, Dr. Ram Sevak Joshi (PW-5), on enquiry by the Police, has categorically stated in para 7 of his evidence that the above injuries found on the body of the deceased could be caused by the axe. Moreover, the axe which was sent to him for examination was found stained with blood and as per the F.S.L. report Ex.P-21	

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मामला क्रमांक 5. A. 4/..... सन् 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	there were blood spots on the axe which was recovered from the place of occurrence. Therefore, we are of the considered opinion that as far as involvement of the accused/appellant in the commission of the crime in respect of Dhaneshwar Prasad is concerned, it is established beyond reasonable doubt and the trial Court has not committed any illegality in coming to the conclusion that the author of the crime in question was the accused. The next argument of Mr. Jain was that the accused used the axe from the blunt side, therefore, from this fact itself it can be inferred that the accused had no intention to cause the death of his brother Dhaneshwar Prasad, otherwise he would have used the axe from the sharp side in order to finish Dhaneshwar. He also argued that the deceased was brother of the accused and there was some dispute, when the deceased was taking buffalos inside the house, on the spur of the moment, the accused assaulted the deceased that too from the blunt side of the axe, therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C. On the other hand, Mr. Sudhir Bajpai, supported the judgment of the trial Court. In order to appreciate the arguments advanced by Mr. Jain, we have perused the evidence of Smt. Ram Kumari Shrivastava (PW-1) and Kum. Kavita Shrivastava (PW-2) as also Dr. Ram Sevak Joshi (PW-5). As	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G...A...4... सन् 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 8 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	per the doctor's evidence, there were seven injuries on the body of the deceased out of which the injury which was on the chest beneath the injury right side ribs 6 to 10 were fractured, and also the fractured ribs punctured the left lung. Bone of the left hand was also fractured. There was haematoma on the head and clotted blood ^{was} present in the temporal region on the left side of the skull. With the above medical evidence, the doctor has stated that the death was due to cumulative effect of these injuries. If we read the above medical evidence along with the evidence of Smt. Ram Kumari Shrivastava (PW-1) and Kum. Kavita Shrivastava (PW-2), wife and daughter of the deceased, respectively, PW-1 has stated in her evidence that at the time of incident she along with her daughter was standing at the place of occurrence when her husband was taking buffalo inside the house, the accused/appellant and his children objected to that, thereafter, when her husband was going inside saying that he is not going to quarrel with his sister-in-law, the accused went to his house and brought the axe, first he attacked on the shoulder, thereafter, continuously attacked with the axe as a result of which, as per the medical evidence, 6-10 right ribs were fractured, hand was fractured, even in the temporal region there was clotted blood and other injuries were also there.	

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मामला क्रमांक A.....4/... सन् 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -9-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	The above act of the accused/appellant is suggestive that the accused caused repeated blows on the vital organs i.e. chest, head and hand in order to finish Dhaneshwar Prasad. Intention of the accused can be gathered from the circumstances under which the offence was committed, nature of the weapon used, place of the body where the injuries were inflicted and the manner in which the injuries were caused, as the accused attacked on the chest as a result of which 5 ribs were fractured which pierced into the left lung, even there was haematoma on the left temporal region, bone of the hand was fractured and there were other injuries also. Therefore, from the above facts it can safely be inferred that intention of the accused to cause the death of Dhaneshwar Prasad was writ large. In the circumstances, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court convicting and sentencing the accused/appellant under Sections 302 & 324 of the I.P.C. In the result, the appeal, being devoid of merit, is liable to be dismissed and it is hereby dismissed.	
Soma	Sd/- Acting Chief Justice	Sd/- Sunil Kumar Sinha Judge

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9/12/2000
9-3-00